TESTIMONY OF THE NATIONAL COMMITTEEON PAY EQUITY

before

THE HOUSE SUBCOMMITTEE ON COMPENSATION AND EMPLOYEE BENEFITS

April 4, 1984

Submitted by:

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Thank you, Congresswoman Oakar and members of the Subcommittee. My name is Nancy Reder, and I am Chair of the National Committee on Pay Equity (NCPE). With me is Claudia Withers, Staff Attorney at the Women's Legal Defense Fund, which serves on the Board of the NCPE and chairs its subcommittee on the EEOC.

The National Committee on Pay Equity is a coalition of over 150 organizations and individuals formed to advocate for pay equity for working women. Our membership includes international unions, major women's and civil rights organizations, legal and professional associations, state and local governments, and individual working men and women.

As the only national coalition working on the issue of pay equity, we are particularly interested in the subject of this hearing. While NCPE has not endorsed any of the legislative proposals which are presently pending, we welcome the opportunity to share our concerns with this subcommittee. We are particularly concerned about the lack of federal enforcement of the law already in existence.

One of the many activities in which NCPE has been involved has been the monitoring of EEOC enforcement in the area of wage discrimination. We have met with EEOC officials in order to find out what was being done in this area. When, in the fall of 1983, information we asked for was not forthcoming, we filed a Freedom of Information Act request. We have critiqued the agency's policy documents and submitted testimony at relevant Congressional hearings. We have developed a series of recommendations for the EEOC to use in its enforcement activities relative to wage discrimination. Many of our members have filed charges of wage discrimination with the EEOC and have pending wage discrimination law suits. We, therefore, welcome this opportunity to share our experience concerning the status of the efforts of the federal enforcement agencies, especially of the Equal Employment Opportunity Commission, to enforce the laws that prohibit wage discrimination on the basis of sex, race, color, religion, or national origin.

THE PROBLEM OF WAGE DISCRIMINATION

The wage gap between women and men is one of the oldest and most persistent symptoms of sexual inequality in this country. Women perform many of the most important jobs in our economy. They teach our children; they are the primary providers of health care in hospitals and nursing homes; they are the mainstay of the financial and business office world. Yet, on the average, women who work full time year round are paid approximately $.61 for every dollar paid to men. [1] The wage gap becomes even wider for women of color, who bear the double burden of discrimination based on sex and race or national origin. Black women earn $.56 for every dollar earned by men, while Hispanic women earn $.52 for every dollar earned by men.[2]

A majority, fifty-two percent, of all employed women work in two of the twelve major occupations: clerical workers and service workers (other than private household workers). In 1982, more than half of all employed women worked in occupations that are 75% female, and 22% of employed women worked in occupations that are more than 95% female. For black women, occupational segregation is even more extreme: the concentration of black women in clerical and service worker occupations is 54%; black women are more likely to be found in service (29.8%) or blue collar jobs (17.2%) than are white women (19.6% and 12.8%); black women are less likely to hold white collar jobs (clerical, sales, professional, managerial) than are white women.

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[1] U. S. Bureau of the Census, Current Population Reports.

[2] Id. Breakdowns for Asian/Pacific and Native American women are not available, and have not been included for that reason.

Occupational segregation carries with it the penalty of lower wages. Compare the following predominantly male and female jobs:

COMPARISONS OF WORTH & SALARY OF SELECTED JOBS[3]

JOB TITLE		MONTHLY SALARY	NUMBER OF POINTS[4]
MINNESOTA			
Registered Nurse	(F)	$ 1,723	275
Vocational Ed. Teacher	(F)	2,260	275
Health Program Rep.	(F)	$ 1,590	238
Steam Boiler Attendant	(M)	1,611	156
Data Processing Coord.	(F)	1,423	199
General Repair Work	(M)	1,564	134
SAN JOSE, CALIFORNIA			
Librarian I	(F)	750	288
Street Sweeper Operator	(M)	758	124
Senior Legal Secretary	(F)	665	226
Senior Carpenter	(M)	1,040	226
Senior Accounting Clerk	(F)	638	210
Senior Painter	(M)	1,040	210
WASHINGTON			
Registered Nurse	(F)	1,368	348
Highway Engineer III	(M)	1,980	105
Laundry Worker	(F)	884	105
Truck Driver	(M)	1,493	97
Secretary	(F)	1,122	197
Maintenance Carpenter	(M)	1,707	197

[3] Hay Associates, State of Minnesota Report, March 1982; Hay Associates, City of San Jose: Study of Non-Management Classes, November 14, 1980; State of Washington Study, Public Personnel Management Journal, Winter 1981/82.

[4] The number of points refers to the jobs' rating in job evaluation studies described in the publications cited in n.3, supra. Job evaluations generally measure the skill, effort, responsibility and working conditions in a job.

A legal mechanism for directly challenging this appalling situation does exist. In June 1981, the Supreme Court issued its decision in Gunther v. County of Washington. Gunther holds that wage discrimination against women who hold jobs which may not be substantially equal to those held by men may be barred by Title VII of the Civil Rights Act of 1964. The Supreme Court did not, however, indicate how such cases were to be developed and proved. The issue is thus ripe for the development of case law, much as the doctrine of disparate impact was developed when the Supreme Court held in Griggs v. Duke Power in 1971 that Title VII could be violated by the use of a facially neutral employment test which nonetheless served to exclude blacks from jobs. But neither the EEOC nor the Department of Justice has taken the opportunity. Instead, their efforts have been marked by reluctance at best, and outright hostility to the notion at worst.

THE DEPARTMENT OF JUSTICE

Because of a recent statement made by William Bradford Reynolds, the Assistant Attorney General for Civil Rights, on this topic, we are compelled to address the role of the Department of Justice before turning to the EEOC. The Department of Justice has failed completely to take any steps to enforce the law against wage discrimination. To the contrary, it has acted in a completely irresponsible way in the one case in which it has had any opportunity to act at all. Without completely reviewing the record in the celebrated case of AFSCME v. State of Washington, Justice Department lawyers have already decided to enter the case on the side of the employer, to urge that the finding that women workers had been discriminated against in wages be overturned.

In a New York Times article of January 22, 1984, Mr. Reynolds was quoted as saying that he was still reviewing the case but had concluded that the Justice Department should support the State of Washington in an appeal challenging Judge Tanner's order. Reynolds actually stated that: "I have absolutely no doubt that his [Judge Tanner's] decision is wrong." In a later meeting with NCPE and other pay equity advocates, Mr. Reynolds again acknowledged that he had not completed his review of the case. He refused, however, to disavow the statement made to the New York Times.

Mr. Reynold's actions display a blatant disregard for his obligation as the nation's chief civil rights enforcer to enforce the law. The Supreme Court has already stated in Gunther that Title VII can be violated where female jobs are not equal to male jobs. Judge Tanner in AFSCME was simply following Gunther, as Chair Thomas of the EEOC has already acknowledged. The Department of Justice is again talking about the law as it wishes it to be rather than as it is.

EEOC ACTION

The EEOC has always recognized that wage discrimination is a Title VII violation. Over the past years, the Commission has found liability for wage discrimination on the basis of sex or race in a number of cases. It participated as amicus in Gunther and

IUE v. Westinghouse[5], taking the position that Title VII applies to sex based wage discrimination, and that nothing in its language or legislative history would lead to the conclusion that is protections should be limited only to situations which constitute a violation of the Equal Pay Act.

Even before Gunther, the EEOC commissioned a study by the National Academy of Sciences to determine both the manner in which conventional wage setting practices operate to discriminate against women and the feasibility of creating bias free wage setting mechanisms. The results of that study, published in the fall of 1981, shortly after the Gunther decision, document the extent of wage discrimination and provide guidance for evaluating sex bias in job evaluation systems. They could provide a sound basis upon which the Commission could rely in investigating some charges of wage discrimination. To date, however, the Commission has largely ignored the findings of the study.

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[5]In IUE v. Westinghouse, F. 2d. 23 EPD Para. 131, 106A (3rd. Cir. 1980), cert. denied, 101 S. Ct. 563, 26 EPD 9131, 890 (1981), the court found that, even though the job classifications were not substantially equal, females in a predominantly female classification could still compare their wages to wages paid to males in a predominantly male classification. The employer had used a job evaluation system to determine the relative worth of jobs at its facilities. Even though male and female job classifications received the same point-rating, wage rates for predominantly female job classifications were deliberately set lower than wage rates for predominantly male job classifications.

Similarly, the Commission held a series of hearings on wage discrimination and job segregation in the spring of 1980. These hearings provide a wealth of information for the Commission to utilize in processing individual charges and developing systemic targets for investigation and litigation. Again, however, the Commission has merely published the transcripts of these hearings; it has taken no action to date in the form of issuing findings from the hearings or implementing any new initiatives based on the hearings or the NAS study.

Indeed, the only positive enforcement action which the Commission has taken in the wake of Gunther was the issuance, on September 15, 1981, of a 90-day notice to "provide interim guidance in processing Title VII and Equal Pay Act claims of sex-based wage discrimination."[6] That notice has been renewed regularly since its original promulgation, and thus represents the policy to which the EEOC has committed itself with respect to processing wage discrimination claims.

Indeed, even the direction provided on the 90-day notice is not being carried out. According to the notice, charges are to be investigated throughly. Investigators are particularly

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[6] See Appendix A for text of notice.

instructed to seek out evidence concerning:

1) A breakdown of the employer's work force by sex in terms of job classifications, assignments, and duties;

2) Written detailed job descriptions and, where appropriate, information gathered from an onsite inspection and interviews in which actual job duties are described;

3) Wage schedules broken down in terms of sex showing job classifications, assignments, and duties;

4) Any documents which show the history of the employer's wage schedules such as collective bargaining agreements which were previously in effect;

5) All employer justification of, or defenses to, the sex based wage disparity;

6) If a job evaluation system is the basis for the sex based wage disparity,...copies of the evaluation and, if available, an analysis of its purpose and operation;

7) If market wage rate is the basis for the sex based wage disparity,...the underlying factors relied upon by the employer and the methods the employer used to determine the market wage rate;

8) If union collective bargaining agreements are the basis for the sex based wage disparity,...copies of those agreements; and

9) Any evidence which shows that the employer or the employer and the union have established and maintained sex segregated job categories.

Most charges and accompanying files are to be sent to Headquarters before a cause finding is made. Yet, we know that this is not happening in the field. In the field, charges are being dismissed for no cause, or are simply not being investigated. For example, one potential charging party attempted to file a wage discrimination charge in the Chicago district office, only to be told that the office had no policy for handling that kind of case. We provided a copy of the 90-day notice to the individual so that she could show it to the investigator in Chicago.

If charges are forwarded to Headquarters, it appears that no action is taken; they remain in limbo. An August 1982 internal EEOC memorandum listed 234 such charges. The latest internal memorandum lists 272 such charges which are languishing in Headquarters.

The EEOC apparently defends its lack of serious attention to investigating wage discrimination on the ground that it has not developed "policy" on the subject. Indeed, we have seen copies of draft memoranda circulating withing the agency which make this argument, and which attempt to create such policy.

These memoranda persist in defining comparable worth as some strange theory under which fall most claims that do not involve equal pay for equal work. Such an analysis ignores the Supreme Court's holding in Gunther. Most wage discrimination claims easily fit within the confines of Title VII's framework. Many can be proved under a disparate treatment analysis, in which it may perhaps be shown that an employer intentionally set wage rates lower for female employees. Such evidence of intent may be shown by direct evidence,

for example, that an employer said that a woman's job classification is paid less than a man's because women "don't support families," or that an employer using a job evaluation system knowingly paid females less even in jobs rated the same as, or more than, male jobs; or it may be inferred from other circumstances of differences in treatment of male and female employees such as occupational segregation by sex. The Commission does not, therefore, need new policy to move forward on these kinds of cases. We submit that, although wage discrimination is a non-CDP issue, the Commission decisions finding liability which already exist and the 90-day notice serve as excellent starting points for investigation and litigation.

The ostensible lack of EEOC policy is merely an excuse for not processing wage discrimination charges. The EEOC has a policy: the 1981 90-day notice. It should use it.

Moreover, not only has the Commission failed to act, but it has allowed the Department of Justice effectively to make policy in the area, by its statements regarding AFCSME v. State of Washington. This is outrageous. We call on the EEOC to insist that the Department of Justice follow its policy, and file an amicus brief or intervene on behalf of the plaintiffs in the case.

Given these problems preventing investigation of wage discrimination cases, it is not surprising that the Commission has filed [illegible] wage discrimination.

(That is, wage discrimination claims that do not involve equal pay for equal work). According to the information that the NCPE received in settlement of its FOIA request, 37 cases categorized as involving Title VII wage discrimination in some form were pending in litigation as of August, 1982, or were filed after August, 1982.[7] Of these, the Commission was able to find and provide copies of 10 complaints.[8] We have been able to identify only three of these cases that appear to involve more than simply equal pay for equal work.

Of those three, none were filed by the present Administration. Two were filed in 1976 or before, and are primarily challenges to sex-segregated job classifications dating from before enactment of Title VII. The third, filed in 1980, involved a company that paid increased wages for people with military service or college credits -- which has a disparate impact on women and minorities. It was recently settled.

It is difficult to evaluate the basis of the complaints because in conformance with notice pleading, their allegations are very general. Moreover, a complaint brought under Title VII alleging wage discrimination is quite likely to involve only equal jobs. Nor do the EEOC designations provided -- "W" for wage and "VII" for Title VII -- shed any light. The only way to find out what a case is <u>really</u> about is to make in-depth inquiries of the attorneys involved.

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[7] The list also includes a few cases that have recently been authorized for litigation but have not yet been filed in court.

[8] The complete list that the EEOC provided included 58 cases, 21 of which included only Equal Pay Act allegations. The Commission provided a total of 23 complaints, but our review revealed that most (13) of them involved classic Equal Pay Act cases.

What we can glean from our review of the information is that the EEOC's litigation of wage discrimination cases since Gunther is virtually non-existent. There is no organized, concerted effort to identify and bring wage discrimination cases; there is no litigation strategy; there is not even a central coordinator who can identify the existing cases.

Based on the above, the Committee believes that EEOC's enforcement efforts in the area of wage discrimination can best be described as inconsistent, ineffective, and totally lacking in any initiative. Chair Thomas testified in the fall of 1982 that he would "look at the issue." We were reassured of this fact in our meeting with him in May of 1983. Commissioner Webb indicated to us that wage discrimination cases would be given priority early this year. Yet, nothing of note has been accomplished. [9]

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[9] The Commission recently approved a change in the focus of the administrative charge processing system. As we understand it, the emphasis is to shift from rapid charge processing to a more extended investigation of charges filed. Such an approach, if properly handled, might help the Commission find out about its wage discrimination charges.

The National Committee on Pay Equity has devised a number of recommendations to the Commission which, if followed, would ensure that wage discrimination cases would be accorded the importance they deserve. These recommendations have been adopted by our membership, and are being used by them in their conversations and meetings with local EEOC officials. These recommendations are summarized as follows:

1) The Commission should vigorously enforce its own policy, known as the "90 day notice," adopted on September 15, 1981 (after the Supreme Court decision in Gunther) to provide interim guidance to field officers on identifying and processing sex based wage discrimination charges under Title VII and the Equal Pay Act. The policy should be reviewed and clarified periodically in order that wage discrimination charges be investigated fully.

2) The Commission should give specialized review and processing to wage discrimination charges. This includes but is not limited to:

   a. Proper training of field personnel in regional EEOC offices in the identification of wage discrimination charges;

   b. Establishing tight time frames for review and processing of these charges; and

   c. Monitoring by the appropriate staff at EEOC headquarters in Washington, D.C. to ensure that time frames are being met.

3) The Commission should establish a mechanism to ensure that wage discrimination charges received by field offices are referred to EEOC headquarters, as dictated by the notice, so that proper monitoring can take place. Field offices should be assessed on the basis of numbers of wage discrimination charges which are processed.

4) The Commission should provide, on a quarterly basis, information to the National Committee on Pay Equity regarding wage discrimination charges and cases. This should include number of charges, field regions in which they filed and names of cases that the EEOC has decided to pursue. In addition, the EEOC should provide the National Committee with information on Equal Pay Act charges and cases.

5) The Commission should establish an EEOC Headquarters Task Force whose functions include:

   a. Targetting of wage discrimination cases as part of the early litigation program and as part of the systemic program so that all appropriate litigation avenues are pursued in a timely way;

   b. Coordination with the EEOC's National Litigation Plan so that wage discrimination will become a litigation priority for the Commission; and

   c. Designation of an individual or individuals in EEOC Headquarters who would be responsible for review of all wage discrimination cases. [10]

Adoption of these recommendations would provide the impetus for the development of a cohesive approach to wage discrimination charges. It would put the EEOC where it should be on this issue: at the forefront. But the EEOC has failed to adopt them.

There are no more excuses to be made: the law is in place and the cases are available for investigation and litigation. All that remains is that the EEOC act.

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[10] See Appendix B for an expanded version of these Recommendations.

APPENDICES

A. EEOC's 90-day Notices to Provide Interim Guidance to Field Offices on Identifying and Processing Sex Based Wage Discrimination Charges Under Title VII and the Equal Pay Act (September 15, 1981)

B. NCPE Recommendations to the EEOC

A

APPENDIX B

NOTICE ADOPTED BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION TO PROVIDE INTERIM GUIDANCE TO FIELD OFFICES ON IDENTIFYING AND PROCESSING SEX BASED WAGE DISCRIMINATION CHARGES UNDER TITLE VII AND THE EQUAL PAY ACT

(ADOPTED FOR 90 DAYS ON SEPTEMBER 15, 1981)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506

AUG 25 1981

MEMORANDUM

TO: J. Clay Smith, Jr., Acting Chairman
Daniel E. Leach, Vice Chair
Armando M. Rodriguez, Commissioner

THRU: Issie L. Jenkins
Acting Executive Director

FROM: Frederick D. Dorsey, Director
Office of Policy Implementation

SUBJECT: Ninety-Day Notice on
County of Washington v. Gunther

The attached Notice was jointly drafted by the Office of Policy Implementation and the Office of Field Services. It is intended to provide interim guidance to field offices on identifying and processing sex based wage discrimination charges under Title VII and the Equal Pay Act in light of the holding in the recent Supreme Court case of County of Washington v. Gunther. The subject matter of this Notice will be fully treated in an up-coming compliance manual section.

The attached Notice was circulated to Headquarters offices for review and comment and presented to SCEP. This document reflects their comments and suggestions.

EEOC **NOTICE** (Administratively Controlled in Ninety Days)

NUMBER

DATE

1. SUBJECT. Interpretative Memorandum: County of Washington v. Gunther, ____ U.S. ____, No. 80-429 (U.S. Sup. Ct. June 8, 1981).

2. PURPOSE. This notice is intended to provide interim guidance in processing Title VII and Equal Pay Act claims of sex-based wage discrimination in light of the recent Supreme Court decision in County of Washington v. Gunther.

3. ORIGINATORS. Office of Policy Implementation and Office of Field Services.

4. EFFECTIVE DATE.

5. INSTRUCTIONS.

County of Washington v. Gunther

In County of Washington v. Gunther, female jail matrons contended that their Title VII rights had been violated because of intentional sex discrimination in that the county set their wage scale, but not the male guards' wage scale, at a lower level than its own survey of outside markets and the worth of the jobs warranted. At the district court level, the court found that the jobs performed by the female matrons were not substantially equal to those performed by the male guards; therefore, it dismissed the action concluding that sex-based wage discrimination claims could not be brought under Title VII without satisfying the equal work standard of the Equal Pay Act. The court of appeals affirmed, and the female matrons did not seek review of the determination that the jobs were not substantially equal. The court of appeals, however, reversed the district court's finding that sex-based wage discrimination claims must satisfy the equal work standard, and remanded holding that such claims can be brought under Title VII even though the jobs are not substantially equal. The Supreme Court granted certiorari and ruled that claims of sex-based wage discrimination can be brought under Title VII subject to the Equal Pay Act's four affirmative defenses, 1/ but that Title VII is not limited by the equal work standard found in the Equal Pay Act. Therefore, the female matrons' claim of intentional sex-based wage discrimination was not precluded under Title VII merely because they did not perform work equal to the male guards.

Thus, while pointing out that traditional concepts of equal pay for equal work under the Equal Pay Act are still applicable to sex-based wage claims, Gunther stresses that Title VII is applicable to claims of sex-based wage disparity without the necessity of showing that the jobs in question are substantially equal (i.e., non-Equal Pay Act compensation cases). In this respect, the decision brings sex-based wage discrimination claims into conformity (save for the applicability of the Equal Pay Act's affirmative defenses) with the Commission's consistently held position in this regard when the charge is based on race or national origin.

The Gunther court, in its narrowly drawn decision, did not rule on whether the female matrons were the victims of intentional sex discrimination, nor did it address the manner in which a prima facie case of wage discrimination on the basis of sex could be shown under Title VII. The Court decided only 1) that sex-based wage compensation claims can be brought under both Title VII and the Equal Pay Act; and 2) that, as indicated above, Title VII's coverage is broader than the Equal Pay Act's coverage. Without deciding the probable success or failure of what it termed "comparable worth" claims when they eventually do come before it, the Court noted that the concept encompasses claims by women for "...increased compensation on the basis of a comparison [generally with reference to market wage rate or a job evaluation system] of the intrinsic worth or difficulty of their job with that of other jobs in the same organization or community."

1/ The Bennett Amendment to Title VII found in §703(h) of Title VII provides that it is not unlawful for an employer to differentiate between employees on the basis of sex with regard to wages paid so long as such differentiation is authorized by the Equal Pay Act. Based upon the legislative history of Title VII, the Court interpreted authorized as subjecting Title VII sex-based wage claims to the following four Equal Pay Act affirmative defenses: seniority system, merit system, system based on quality or quantity of production, or any other factor other than sex.

IDENTIFYING AND PROCESSING CHARGES 1/

Both Title VII and the Equal Pay Act cover sex-based wage discrimination claims brought under the equal pay for equal work standard. Gunther now makes it clear that Title VII is also applicable to sex-based wage claims other than those involving equal pay for equal work. The EOS should, therefore, recognize the similarities and differences between the two statutes and be able to advise charging parties of their rights in this regard. Claims brought under the equal pay for equal work standard involve charges by women that their jobs are substantially equal with regard to the factors of skill, effort, responsibility, and working conditions in the same establishment, but are paid at a lower wage than jobs held by men. For example, a female telephone operator would compare herself with a male telephone operator, or other male performing substantially equal work regardless of job title, 1/ in the same establishment. The traditional Equal Pay Act comparisons and methods of proof, however, may not be applicable to Title VII charges of sex-based wage discrimination where the equal pay for equal work standard is not involved. In a charge brought under Title VII, a charging party could, therefore, attempt by other means to prove that her wage rate is depressed simply because she is a woman or is in a traditionally female job. She may not even allege that jobs are or were ever held by males for comparison purposes; that the jobs are substantially equal; or that the establishment is the same. 2/ The female telephone operator referred to above could conceivably disregard comparing herself to males if she is in a female only job category, or she could compare herself to a male telephone operator who works in another establishment of the same employer, as well as to a male who works in an entirely different job classification (i.e., a male elevator operator).

It is extremely unlikely that a charging party could make out a case of wage discrimination simply by comparing herself to a male in the same job, but employed by another employer. In some cases, however, such a comparison might be probative evidence of discrimination. For example, if Employer A sets the wages of his/her employees by a comparison to Employer B's wage scale, an employee of A may show that:

(a) She works in an all-female job category;

(b) At Employer B, men perform the identical job;

(c) The women at Employer A are paid less for doing the same work that men at Employer B perform; and

(d) All other male employees at Employer A are paid the same amount as all other male employees at Employer B.

The preceding fact situation would be relevant to a showing that Employer A had depressed the women's wages because of their sex.

The EOS should accept and investigate these charges under Title VII. (See Investigating Charges section below.) However, if the charging party

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1/ As noted above, Title VII principles apply to the processing and investigating of wage discrimination charges regardless of whether they are based on national origin, race, sex, color, or religion. However, under the Bennett Amendment, the four Equal Pay Act affirmative defenses are only available to sex-based wage discrimination claims.

1/ As long as the jobs are substantially equal, Equal Pay Act comparisons can be made regardless of whether there are some differences in job content or whether the job titles are different.

2/ An employer can be an entity such as a city, county, or state government and comparisons can be made between its different agencies or units.

compares herself to a male employed by another employer, the Office of Policy Implementation should be contacted prior to determining how the charge should be processed.

In the future, since it is not always easy during intake to determine whether the equal pay for equal work standard can be met, counseling of potential charging parties should be expanded to reflect the scope of Gunther. Emphasis should be placed on the coverage of Title VII and the Equal Pay Act in the particular case and, if appropriate, the advantages of filing under both statutes, including the procedural and substantive differences between the two statutes. Unless the charging party specifically elects to proceed only under the Equal Pay Act, sex-based wage discrimination claims should be concurrently processed. At a later stage of processing, beyond the initial intake, a determination should be made whether the claim should continue to be processed under the Equal Pay Act, Title VII, or both. If the Equal Pay Act processing is discontinued because the equal work standard cannot be met, the charge should be referred to the CIC unit or the fact finding unit, as appropriate, for further processing under Title VII.

INVESTIGATING CHARGES

To aid in evaluating sex-based wage claims, the following information should be secured for respondent's work force or an appropriate segment of the work force, in documentary form, where available, and analyzed using investigative principles developed in equal pay cases (OPI should be contacted prior to investigation for assistance in defining the scope of the "Request for Information"):

1) A breakdown of the employer's work force by sex in terms of job classifications, assignments, and duties;

2) Written detailed job descriptions and, where appropriate, information gathered from an on-site inspection and interviews in which actual job duties are described;

3) Wage schedules broken down in terms of sex showing job classifications, assignments, and duties;

4) Any documents which show the history of the employer's wage schedules such as collective bargaining agreements which were previously in effect;

5) All employer justification of, or defenses to, the sex-based wage disparity;

6) If a job evaluation system is the basis for the sex-based wage disparity, the EOS should obtain copies of the evaluation and, if available, an analysis of its purpose and operation;

7) If market wage rate is the basis for the sex-based wage disparity, determine the underlying factors relied upon by the employer and the methods the employer used to determine the market wage rate;

8) If union collective bargaining agreements are the basis for the sex-based wage disparity, the EOS should obtain copies of those agreements; and

9) Any evidence which shows that the employer or the employer and union have established and maintained sex-segregated job categories.

NON-CDP ISSUES

The Gunther Court referred in its decision to three issues which are currently non-CDP. The first issue involves the requirements for a prima

THE COMPARABLE WORTH ISSUE

facie case of sex-based wage discrimination in claims brought under Title VII. The second issue concerns the application of the four Equal Pay Act affirmative defenses, with particular emphasis on the effect of the fourth defense ("any other factor other than sex"), to sex-based wage discrimination claims brought under Title VII. For example, once a prima facie case has been established, does reliance by the respondent on the open market wage rate constitute a factor other than sex, so as to render the respondent's action nondiscriminatory? The third non-CDP issue concerns claims of sex-based wage discrimination brought under Title VII that may be based on the concept sometimes referred to as "comparable worth." The following examples are representative, though not exhaustive, of the types of practices involving sex-based wage claims under Title VII, including those which come under the concept sometimes referred to as "comparable worth."

Example 1 - R segregated its labor jobs by sex into two categories, assembly line (female) and craft (male). The jobs were then "point rated" based on a job evaluation system. Although the jobs primarily held by females received the same "point rating" as the jobs occupied by males, R nonetheless set the wage rates lower on the jobs primarily held by females. CP, a female in a primarily female job category, filed a charge under Title VII alleging that she and other females at R's facility were intentionally discriminated against because of their sex.

Example 2 - R uses a job evaluation system that looks at several compensable factors to aid in determing the worth of jobs. The factors of experience and extent of trade knowledge are rated exceptionally high, while education is rated exceptionally low. CP, a female with substantial education and relatively little experience or trade knowledge, files a Title VII charge of sex-based wage discrimination. She alleges that the result of the weight allocated to the factors is that women who are relatively new to the once sex-segregated industry are paid less than men. She alleges, based on job duties, that education should be rated at least as heavily as experience or trade knowledge.